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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

Jaime Altamirano, *on behalf of himself and others  
similarly situated in the proposed FLSA Collective  
Action,*

Plaintiff,

-against-

127 Fourth Avenue Restaurant LLC (d/b/a Mocha  
Red Steakhouse + Mixology Bar), and Naphtaly  
Abenaim,

Defendants.

ECF Case

1:22-cv-10500 (CM)

**NOTICE OF MOTION TO VACATE  
CERTIFICATES OF DEFAULT AND  
EXTEND DEFENDANTS' TIME TO  
ANSWER MOVE OR OTHERWISE  
RESPOND TO THE COMPLAINT**

MEMO ENDORSED

**PLEASE TAKE NOTICE** that pursuant to Federal Rule of Civil Procedure 55(c) and upon the Declaration of Bryn Goodman, Esq. dated June 12, 2023 with its Exhibits, and attached Memorandum of Law of Defendants 127 Fourth Avenue Restaurant LLC and Naphtaly Abenaim ("Defendants") in Support of Motion to Vacate Certificates of Default and Extend Defendants' Time to Answer, Move, or Otherwise Respond to the Complaint, Defendants will move this Court before the Honorable Judge Colleen McMahon in the Daniel Patrick Moynihan United States Courthouse, 500 Pearl St. New York, NY 10007, on a date and at a time to be set by the Court for an Order (a) directing the Clerk of the Court to vacate both Certificates of Default entered May 1, 2023 and June 8, 2023, and (b) extending Defendants' time to answer, move, or otherwise respond to the Complaint up to and including Thursday, June 29, 2023, and for such other and further relief as the Court may deem just and proper, on the grounds that there was no willful default herein by


6/13/2023

There is no need for any response to this motion. I never press a default once a party shows up and I refuse to condition the matter on waiving defenses. Therefore, the Clerk of Court is directed to VACATE the certificates of default. Defendants have until June 29 to move or answer w/r/t the complaint. CA

Defendants, Defendants have meritorious defenses and Plaintiff has not suffered and will not suffer any prejudice.

Dated: New York, New York  
June 12, 2023

**FOX ROTHSCHILD LLP**



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TO: All Counsel via ECF